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Delaware Courts Take Dim View of Two Recent Mergers

by Gustavo F. Bruckner and H. Adam Prussin

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In two recent decisions, the Delaware Chancery Court harshly criticized parties who were deeply enmeshed in negotiating mergers despite their rather blatant conflicts of interest. In both cases the courts declined to block shareholder votes on the deals because they offered significant premiums to shareholders; but in both the courts did signal that the plaintiffs had an excellent chance of collecting damages from these conflicted parties.

The Rancid El Paso – Kinder Morgan Deal. Shareholders, including several pension funds, sued to enjoin the proposed $21 billion merger between energy companies El Paso and Kinder Morgan, raising troubling questions about the motivations and loyalties of the key players ostensibly representing the shareholders in the merger negotiations.

In a much-anticipated ruling, following a well-publicized 6-1/2 hour hearing, Delaware Chancellor Strine "reluctantly" denied plaintiffs' motion to preliminarily enjoin the transaction, even though the merger negotiations were hopelessly compromised by conflicts of interest by both the CEO and by deal advisor Goldman Sachs. The court let the shareholder vote go forward because it didn't want to run the risk of killing a deal that offered a substantial premium over market price for shareholders. In such a case, the Court held that a damage remedy would be preferable.

The Court's opinion made no bones about the bad behavior that compromised the merger negotiations. Before there was any merger deal on the horizon, El Paso had publicly announced a spin-off of its exploration and production ("E&P") business in May 2011 that received favorable market reaction and boosted its stock price. In August of 2011, before the spin-off could occur, Kinder Morgan stepped in and offered to buy the entire company, with the intention of spinning off the E&P business after the merger.

Negotiating the deal on behalf of El Paso, its CEO, Douglas Foshee, tried to arrange a side deal for himself to buy the E&P business from Kinder Morgan after the merger. This created a conflict of interest, because the more Kinder Morgan had to pay for El Paso, the more it would presumably expect back from Foshee when it resold part of that company to him. As a result, according to the Court, when Foshee "was supposed to be getting the maximum price from Kinder Morgan, he actually had an interest in not doing that." Making matters worse, Foshee never disclosed this conflict to the El Paso board. Although the CFO and the head of the E&P business unit knew about Foshee's efforts to negotiate a side deal for himself, and wanted in, they didn't disclose it either, and the Chancellor's decision in effect invited the plaintiffs to add them as defendants.

It was not difficult to find evidence that Foshee's conflict affected his negotiations. At the outset, he allowed Kinder Morgan to walk away from its original bid when Kinder Morgan announced that it had made a mistake in valuing the company. Then he made a counter-proposal 50 cents per share lower than the El Paso board had authorized him to make.

Foshee wasn't the only key player with a conflict. Goldman Sachs ("Goldman"), the El Paso board's financial advisor, stood on every possi-

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ble side of this transaction. It was El Paso's financial advisor; but it owned 19% of Kinder Morgan (an investment worth about $4 billion), which allowed it to control two Kinder Morgan board seats. Worse, the senior Goldman advisor on this deal personally owned approximately $340,000 worth of Kinder Morgan stock, but did not disclose that fact to El Paso.

In the Court's view, Goldman's conflict was "actual and potent, not merely potential." As the Chancellor noted, "although Goldman's conflict was known, inadequate efforts to cabin its role were made." Even though the two Goldman appointed directors recused themselves from involvement in the deal on the Kinder Morgan end, and El Paso retained Morgan Stanley as a second advisor on this deal, the court determined that Goldman continued to have influence over the board's assessment of a potential spin-off – an alternate transaction that would have been less favorable for Goldman but which might have been a better option for El Paso.

In particular, even after Morgan Stanley was brought in, "Goldman continued to intervene and advise El Paso on strategic alternatives, and with its friends in El Paso management, was able to achieve a remarkable feat: giving the new investment bank [Morgan Stanley]an incentive to favor the merger by making sure that this bank only got paid if El Paso adopted the strategic option of selling to Kinder Morgan." In other words, had the board authorized a course of action less beneficial to Goldman, such as the spin-off, Morgan Stanley would have received nothing.

This travesty might have been avoided had Goldman simply stepped aside from its advisory role entirely, as it should have. Bringing in yet another advisor looks a lot like a cover for allowing Goldman to continue to stick its fingers into this transaction.

Given these conflicts, it is not surprising that there were many weaknesses in the actual terms of the deal. Before agreeing to the merger, the El Paso board did not test the market to see if there were any other possible buyers of all or part of El Paso, instead agreeing to a deal protection package that precluded termination of the merger agreement if a better bid for the E&P business emerged and that made it very expensive for a bidder on the valuable pipeline business alone, because of a $650 million termination fee and matching rights awarded to Kinder Morgan.

Nevertheless, the Court noted that the board was overwhelmingly comprised of independent directors, many of whom have substantial industry experience. As the Court observed, "most important, the independent directors' reliance upon Foshee seems to have been made in good faith." Similarly, "although they should have been more keen to Goldman's conflict, they were given reason to believe that the conflict had been addressed by the hiring of Morgan Stanley." Furthermore, the stock component of the consideration has appreciated since the announcement of the Merger (ironically, because Kinder Morgan is perceived by the market as getting such a bargain, its stock has gained in value) and there was no rival bid for El Paso.

The Chancellor seemed conflicted on whether to enjoin the transaction (the word "conflict" was used 22 times in the 33 page opinion). He took a swipe at shareholders who, even with the "kind of troubling behavior exemplified here … continue to display a reluctance to ever turn down a premium-generating deal when that is presented." But ultimately he determined that "El Paso stockholders are well positioned to turn down the Kinder Morgan price if they do not like it," and "should not be deprived of the chance to decide for themselves about this merger, despite the disturbing nature of some of the behavior leading to its terms."

The case is not over, because the shareholders' claims for damages remain – claims which, in light of the Court's opinion, look rock solid.

The Equally Rancid Delphi-TMH Deal.
About a week after the decision in *El Paso*, the Chancery Court denied another preliminary injunction motion in a shareholder lawsuit, this one arising from the proposed acquisition of Delphi Financial by Tokio Marine Holdings ("TMH"). The problem here arose from the insistence of Robert Rosenkranz, Delphi's founder and controlling shareholder, that he receive more per share than other company shareholders, even though the corporate charter expressly said that he wasn't entitled to that.

A control premium is not unusual, except that here the Delphi corporate charter required that all shares be treated the same in the event of a merger. As CEO, Rosenkranz led the merger negotiations; but at first he did not tell anyone at Delphi that he intended to demand a higher price for his own (class B) shares than he was negotiating for the other (class A) shares. When he finally did disclose his intentions, he made it clear to the Delphi board that he would not approve any deal unless he received a premium for his shares. In other words, here, as in El Paso, the CEO, who negotiated the deal, was more interested in promoting his own interests than those of the shareholders as a whole.

The Court found Rosenkranz' actions to be "troubling," concluding that in light of the "equal treatment" provision in the charter, shareholders were entitled to expect, when they bought their shares, that they would be treated equally in a

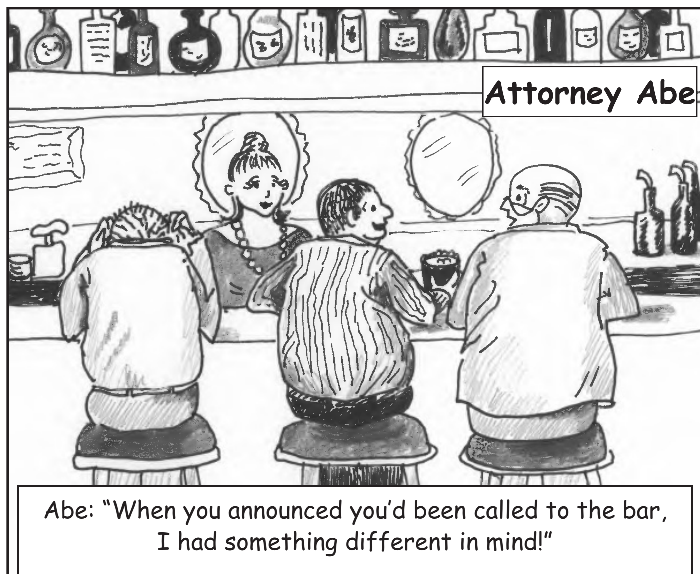
merger. "I therefore find that the Plaintiffs are reasonably likely to be able to demonstrate at trial that in negotiating for disparate consideration and only agreeing to support the merger if he received it, Rosenkranz violated duties to the stockholders."

But once again here, as in *El Paso*, the Court refused to enjoin the shareholder vote on the merger. Even with the invidious discrimination in price, the minority shareholders were still being offered a 76% premium for their shares, and the court did not want to run the risk that this offer might disappear if an injunction were granted. As in *El Paso*, the Court determined that damages would provide an adequate remedy.

This ruling will no doubt lead to the deal being approved and Rosenkranz and other defendants eventually agreeing to sweeten the pot for the Class A shareholders.

In Wake of *Morrison*, Securities Fraud Cases Involving Foreign Companies Start to Shift From U.S. Federal Courts

Two years ago, in the wake of the Supreme Court's decision in *Morrison* concerning the extraterritorial application of United States securities laws, we noted that most legal commentators predicted a major decline in securities litigation. In that case the Supreme Court created a bright line rule that lawsuits alleging securities fraud involving companies whose securities were traded on a non-U.S. exchange could not be brought under U.S. law. This ruling extended even to cases where the conduct at issue – such as the alleged fraudulent misrepresentations – actually took place at a company's U.S. headquarters.



Of course, many institutional investors routinely purchase securities on many different exchanges throughout the world. When a company whose stock trades on a non-U.S. exchange engages in securities fraud, are investors who purchased those securities outside the United States simply out of luck?

Class Cases Filed in Foreign Courts

The answer is decidedly "no." Since the Supreme Court decided *Morrison*, we have seen an increase in securities actions brought in jurisdictions outside the United States. Some of these are class actions, or actions similar to U.S.-based class actions. Others are individual securities actions.

For example, there are by our count more than two dozen active securities class actions pending in Canada. A recent report by the consulting firm National Economic Research Associates confirms that last year alone, 15 securities class actions were filed there, the most ever. Similar actions are also pending in the Netherlands, Germany, and Israel. New laws allowing class actions were passed in Mexico, and England also allows "group actions," which can be pursued on a representative basis, just like class actions.

A good example of the migration of securities fraud class actions is the action against Fortis, a financial services company based in Belgium. The plaintiffs in that action – some of the largest European pension funds, which purchased their Fortis securities on a foreign exchange – initially brought a class action in the U.S., but their case was dismissed by a U.S. court under *Morrison*. A year later they brought their case, which mirrors the allegations of the U.S. action, in a Dutch court.

There are a number of differences in the procedural and substantive law in these foreign jurisdictions, of course, including how damages may be calculated, whether attorneys fees can be shifted to the losing party, the rules for defining and certifying a class, and (particularly in the case of Canada) whether, as in the U.S., discovery is going to be held up until a motion to dismiss is decided. Whether it may be worthwhile to bring a securities fraud action in a foreign jurisdiction, whether the action should see certification of a class of all similarly situated investors or be brought as an individual action, and how to litigate and win whichever action is brought, are critical questions investors should ask their securities counsel. That counsel must also have relationships with the few securities practitioners in other countries who represent plaintiffs, rather than corporate clients, and who may be willing to forego hourly fees in favor of the contingent fee structure utilized by many U.S. based securities firms who represent institutional investors.

Individual Cases Under State Law

Morrison made clear that class actions for recovery of fraud

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related to damages arising from purchases abroad cannot be pursued under the federal securities laws. In so doing, the Supreme Court relied principally on the text of the 1934 Exchange Act. However, there is no such textual limitation for fraud claims arising under state statutory and common law. Thus, to the extent that a domestic investor purchased shares on a foreign exchange, and relied upon materials disseminated in the U.S., the injury arose in the U.S. at the place where the purchaser was misled -- not where the trade was executed. Thus, the case could be brought under the state law where the purchaser resided.

By the same token, if wrongdoing that contributed to the fraud occurred in a particular state (e.g., improper accounting for revenues by a U.S. subsidiary), that state should have an interest in protecting all persons injured by the misconduct, regardless of where they reside or purchased the shares. Under this rationale, even foreign investors could bring claims under the laws of the state where the subsidiary of the corporation was domiciled.

These cases must be brought individually, not on a class basis, in order to avoid the federal statutory preemption of securities fraud class actions under SLUSA. There will likely be *forum-non conveniens* hurdles as well, but these obstacles should be minimal if class actions are otherwise pending for those who purchased ADRs of the same company on U.S. exchanges.

Robert J. Axelrod and Marc I. Gross

Say on Pay Is Having its Day

Although only 45 companies – less than 2% of all publicly held companies – lost "say on pay" votes last year, the *Wall Street Journal* reports that many of those companies are going out of their way to do better this year. Jacobs Engineering and Beezer Homes, for example, have already obtained approval, after revamping executive pay, to bring it into better alignment with overall corporate performance. Beezer, in particular, got a new CEO, hired a new compensation consulting firm and adopted a new performance-based stock plan that stopped giving executives automatic restricted stock grants, and went to great lengths to consult with investors about compensation. As a result, at its annual meeting in February it received 95% shareholder approval of its pay plans. Jacobs did much the same thing (though it kept its CEO) and increased its shareholder "yea" vote from 45% last year to 96% at its annual meeting in January of this year.

Executive turnover at loser companies has been roughly twice the average rate. About 1 in four installed a new CEO after the vote, and about 1 in 5 put in a new CFO, both more than double the average turnover rate.

Corporate governance mavens will be looking ahead to votes later this spring at other loser companies from last year, including Hewlett Packard and Cincinnati Bell. H-P has a new CEO, Meg Whitman, who is pulling in $1 in compensation, and has reportedly held compensation discussions with 200 or so of its nearest and dearest institutional investor shareholders, in an effort to tie compensation more closely to corporate performance. Cincinnati Bell, which was sued by shareholders after losing last year's vote, agreed to revamp disclosures and to dump its compensation consultants if it loses another say on pay vote.

The effect of say on pay votes is largely attributable to the attention that Institutional Investor Services ("ISS"), the proxy advisory firm, has been paying to this issue. The *WSJ* reports that a study published in the journal *Financial Management* concluded that a negative ISS recommendation on a management proposal influences between 13.6% and 20.6% of investor votes; and in 2011, ISS advised investors to vote "no" on pay proposals about 11% of the time. Some are predicting that the ISS will say "no" far more often this year than last. In one highly publicized incident, ISS got into a brawl with Disney over its pay packages. Disney won this won, by aggressively fighting back.

Also amplifying the impact of "say on pay" votes is the SEC ruling that executive compensation matters fall into the "Broker May Not Vote" category under its Rule 452. That means that brokers, who tend to vote reflexively with management, cannot vote shares held by their investor customers, if those customers have not sent them instructions on how to vote. This means that companies will have to work that much harder to secure investor "yea" votes on compensation.

H. Adam Prussin

"Collective Action" Permitted in Citibank Overtime Pay Case

A federal judge has conditionally certified a nationwide "collective action" in Pomerantz' overtime pay case against Citibank, and has authorized us to send a notice to personal bankers who may have been affected by the misconduct we allege in our complaint.

We brought this case on behalf of Citi personal bankers (PBs) nationwide who we allege worked "off-the-clock" overtime but were not paid for it. This alleged conduct would violate the Fair Labor Standards Act (FLSA), as well as several state laws, including New York's.

Under the relevant law, we had to make a "modest showing" that there are others who are "similarly situated" to our clients. Here, Citibank has at least 4,000 PBs, of whom we have been able to identify, so far, about two dozen employees who were not paid for overtime work. Citi argued that this was not enough.

To bolster our contention that there are a lot more PBs who were "similarly situated" we relied on evidence of dual-edged nationwide policies that created an environment that was ripe for FLSA/overtime violations. We argued that the court could infer from the existence of these policies that there are probably many more PBs who suffered the same fate as our clients. Citi had a nationwide job policy and high sales quotas that effectively forced PBs to work overtime to keep their jobs; but Citi also had a nationwide "no overtime" policy that strongly discouraged the incurring of overtime expenses. The natural result of these conflicting policies was that people worked overtime but were not paid for it, either because they were intimidated into underreporting their time, or in some instances, their managers altered their time records to show no overtime worked. Our plaintiffs testified that this in fact occurred.

Because the policies were carried out nationwide, it was reasonable to infer that there are many other PBs who are "similarly situated" to our clients. Citi argued that its policies were "facially lawful," and that the court could not infer a pattern of FLSA violations simply because it had otherwise lawful policies that had conflicting goals. The Court disagreed.

Murielle Steven Walsh

"Muppet-Gate" Hits Goldman

Right on the heels of the embarrassing pasting it took in the *El Paso* decision discussed earlier in this issue, Goldman has been struck another blow. In an op-ed piece in *The New York Times*, Greg Smith, a now former Executive Director at Goldman Sachs, announced his resignation to all the world and set off a fire-storm. Burning his bridges behind him, Smith took a parting shot at the entire management of the firm, including Goldman's CEO Lloyd Blankfein.

Smith charges that the culture of the firm has drastically changed from when he joined the firm twelve years ago, a golden age when the spirit of "teamwork, integrity . . . humility and always doing right by our clients" was the watchword at Goldman. According to Smith, the "secret sauce" of Goldman's corporate culture was that it put its clients' interests first.

Now, he claims, Goldman has turned into a greedy money machine, where the only possible means for advancement is lining the firm's coffers – even at the expense of clients. Smith says that are three ways to become a leader at Goldman: 1) persuade your clients to buy products that Goldman is peddling because it wants to remove them from its own balance sheet; 2) "Hunt Elephants" – get clients to trade whatever will yield the biggest profits to Goldman; and 3) trade in illiquid opaque products which add little value to the firm's clients.

Most memorable are Smith's tales of Goldman employees openly bragging about ripping off their clients – whom they contempuously refer to as simple-minded "muppets" – and "rip[ing] their eyeballs out." According to Smith, the derivative sales meetings never focus on how Goldman can help their own clients, but rather on how to line their own pockets. The prime culprits, according to Smith, are Goldman CEO Lloyd Blankfien and President Gary D. Cohn, who lost hold of the firm's proud 143-year-old culture on their watch.

From our vantage point, Goldman has not changed significantly in the past 12 years. What shocks is not the picture of Goldman that emerges – this is, after all, the same firm that has repeatedly run afoul of the SEC, and was famously lambasted by *Rolling Stone* as "a great vampire squid wrapped around the face of humanity, relentlessly jamming its blood funnel into anything that smells like money." It is that anyone working for Goldman has the chutzpah to say this out loud.

As for Smith's motives in staking out the moral high ground, time will tell. As Felix Salmon of Reuters aptly commented, if he goes on to found or join a rival company, Smith's decision to harm Goldman will look rather self-serving. But, if he goes to work regulating all investment banks from the outside, we might start taking him more seriously.

Jeremy A. Lieberman

Third Circuit Approves Nationwide Settlement of Claims Against DeBeers

The Third Circuit recently issued an *en banc* opinion approving a District Court's certification, for settlement purposes, of two nationwide class actions against DeBeers and others. Plaintiffs alleged that defendants had violated antitrust, consumer protection and other laws of numerous states through agreements restraining trade in diamonds. By the settlement the defendants had agreed to pay $22.5 million to people who purchased diamonds directly from the defendants, while $272.5 million was to be paid to "indirect purchasers," such as consumers, who purchased diamonds from defendants through middlemen, such as retailers.

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The real dispute concerned the settlement of the "indirect purchaser" claims, because many of the would-be class members reside in states where such purchasers may not recover damages for these kinds of violations. The settlement class included both those who had a valid cause of action under the laws of their state, and those who didn't. The objectors argued that the validity of the claims under various state laws was an issue that "predominated" over common questions and, therefore, made certification of a nationwide indirect purchaser class improper.

The *en banc* decision rejected this argument and ruled that a court, in reviewing a proposed class action settlement, does not have to decide that all members of the putative class have a valid cause of action. The court held that the common questions concerning defendants' conduct, and the injury it caused to the class, "predominated," particularly at the settlement stage. The question of whether class members from particular states had "standing" to recover did not, in the court's view, "predominate" over those questions.

The court established the following three "guideposts" that govern all certification decisions, whether in a litigation or settlement context: (i) predominance is primarily based on questions concerning the defendant's conduct and the resulting injuries; (ii) variations in state law do not defeat predominance of common questions; and (iii) variations in state law are even less important when the court is considering the certification of a settlement class. Over the past few years, district court decisions have sometimes overlooked these principles and held that variations in state law can defeat certification. The *en banc* panel makes clear that certification is appropriate in these types of cases.

Michael M. Buchman

notable dates

. . . on the Pomerantz horizon

March 12: **Marc Gross** will speak at the **Institutional Investor Conference** in Tel Aviv, Israel. **Jeremy Lieberman** will also attend.

March 20: **Cheryl Hamer** will attend the **National Association of State Treasurers (NAST)** Foundation Dinner in Washington, DC.

March 25-28: **Cheryl Hamer** will attend the **Texas Association of Public Employee Retirement Systems (TEXPERS)** Annual Conference in Corpus Christi, Texas.

April 1-3: **Cheryl Hamer** will attend the **Council of Institutional Investors (CII)** Spring Meeting in Washington, DC.

April 18: **Cheryl Hamer** will attend the **National Coordinating Committee for Multiemployer Plans (NCCMP)** Lawyers and Administrators Meeting in Washington, DC.

April 23-24: **Cheryl Hamer** will attend the **International Foundation of Employee Benefit Plans (IFEBP)** Conference in White Sulphur Springs, West Virginia.

April 26-27: **Marc Gross** and **Jason Cowart** will attend the the **Institute for Law and Economic Policy (ILEP)** conference in Bahia Beach, Puerto Rico

April 29-May 2: **Cheryl Hamer** will attend the **Building and Construction Trades Department** National Legislative Conference in Washington, DC

May 6-9: **Cheryl Hamer** will attend the **National Conference on Public Employee Retirement Systems (NCPERS)** Annual Conference in New York, New York.

May 21-23: **Marc Gross** and **Jeremy Lieberman** will attend the **National Association of Pension Funds (NAPF)** Local Authority Conference 2012 in Gloucestershire, United Kingdom.

June 11-13: **Cheryl Hamer** will attend the **IFEBP** Trustees and Administrators Conference in San Francisco, California.

Cheryl D. Hamer

Marc I. Gross

Jeremy A. Lieberman

Jason S. Cowart

PomTrack© Class Actions Update

Pomerantz, through its proprietary PomTrack© system, monitors client portfolios to identify potential claims for securities fraud, and to identify and evaluate clients' potential participation in class action settlements.

NEW CASES:

A selection of recently filed securities class action cases filed by various law firms are listed below. If you believe your fund is affected by any of these cases, contact Pomerantz for a consultation.

Case Name	TICKER	Class Period	Lead Plaintiff Deadline
Career Education Corporation (2012)	CECO	January 1, 2009 - November 1, 2011	March 13, 2012
CPI Corp.	CPY	April 20, 2010 - December 21, 2011	March 13, 2012
Netflix, Inc. (2012)	NFLX	December 20, 2010 - Oct. 24, 2011	March 13, 2012
HearUSA, Inc.	HEARQ	January 18, 2011 - July 31, 2011	March 19, 2012
Cablevision Systems Corporation (2012)	CVC	February 16, 2011 - October 28, 2011	March 26, 2012
Collective Brands, Inc.	PSS	December 1, 2010 - May 24, 2011	March 26, 2012
Health Management Associates, Inc. (2012)	HMA	July 27, 2009 - January 9, 2012	March 26, 2012
TranS1 Inc.	TSON	February 21, 2008 - October 17, 2011	March 26, 2012
Walter Energy, Inc.	WLT	April 20, 2011 - September 21, 2011	March 26, 2012
K-Sea Transportation Partners L.P. (2012)	KSP	January 30, 2009 - January 27, 2010	March 27, 2012
Columbia Laboratories, Inc. (2012)	CBRX	December 6, 2010 - January 20, 2012	April 2, 2012
Hecla Mining Company	HL	October 26, 2010 - January 11, 2012	April 2, 2012
K12 Inc.	LRN	September 9, 2009 - Dec. 16, 2011	April 2, 2012
GenVec, Inc.	GNVC	March 12, 2009 - March 30, 2010	April 3, 2012
Molycorp, Inc.	MCP	March 9, 2011 - November 10, 2011	April 3, 2012
The Student Loan Corporation (2012)	STU	January 15, 2008 - Sept. 23, 2010	April 3, 2012
BioSante Pharmaceuticals Inc.	BPAX	February 8, 2010 - Dec. 15, 2011	April 6, 2012
Xcelera Inc.	XLACF		April 6, 2012
Carbo Ceramics Inc.	CRR	October 27, 2011 - January 26, 2012	April 9, 2012
Powerwave Technologies, Inc. (2012)	PWAV	February 1, 2011 - October 18, 2011	April 9, 2012
Eastman Kodak Company (2012)	EKDKQ	January 26, 2011 - Sept.23, 2011	April 10, 2012
New Energy Systems Group	NEWN	April 15, 2010 - November 14, 2011	April 10, 2012
DryShips, Inc. (2012)	DRYS	Dec. 1, 2008 - Dec. 31, 2010	April 13, 2012
Kinross Gold Corporation	KGC	February 16, 2011 - January 17, 2012	April 16, 2012
Metabolix, Inc.	MBLX	March 10, 2010 - January 12, 2012	April 17, 2012
SAIC, Inc.	SAI	April 11, 2007 - September 1, 2011	April 23, 2012
China Sky One Medical, Inc.	CSKI	April 16, 2009 - February 14, 2012	April 24, 2012
CNOOC Limited	CEO	January 27, 2011 - Sept. 16, 2011	April 30, 2012
MLP AG (Germany)	MLP	January 1, 1999 - Dece. 31, 2002	December 31, 2012

SETTLEMENTS:

The following class action settlements were recently announced. If you purchased securities during the listed class period, you may be eligible to participate in the recovery.

Case Name	Amount	Class Period	Claim Filing Deadline
Intermix Media, Inc. (2006)	$45,000,000	July 18, 2005 - September 30, 2005	March 15, 2012
Nortel Networks Corporation (SEC)	$35,500,000	October 24, 2000 - April 27, 2004	March 16, 2012
Acura Pharmaceuticals, Inc.	$1,500,000	February 21, 2006 - April 22, 2010	March 19, 2012
Westland Development Co., Inc. (D. N.M.)	$3,778,702	September 18, 2006	April 2, 2012
Focus Media Holding Limited (2007)	$2,000,000	September 27, 2007 - Nov. 19, 2007	April 5, 2012
Beckman Coulter, Inc. (2010) (C.D. Cal.)	$5,000,000	July 31, 2009 - July 22, 2010	April 12, 2012
Nalco Chemical Company (SEC)	$8,390,982	June 1, 1999 - June 28, 1999	April 13, 2012
Merrill Lynch Mortgage Investors, Inc. (Mortgage Pass-Through Certificates)	$315,000,000		April 25, 2012
CardioNet, Inc. (2010)	$7,250,000		April 27, 2012
Fidelity Ultra-Short Bond Fund	$7,500,000	June 6, 2005 - June 5, 2008	April 27, 2012
Northfield Laboratories, Inc.	$1,500,000	August 16, 2004 - March 20, 2006	May 1, 2012
Apollo Group, Inc. (2004)	$145,000,000	February 27, 2004 - Sept. 14, 2004	May 2, 2012
Lehman Brothers Holdings, Inc. (S.D.N.Y.) (Equity/Debt Securities - D&O)	$90,000,000	June 12, 2007- -September 15, 2008	May 17, 2012
Lehman Brothers Holdings, Inc. (S.D.N.Y.) (Equity/Debt Securities - Underwriters)	$426,218,000	June 12, 2007 - September 15, 2008	May 17, 2012
Motorola, Inc. (2007)	$200,000,000	July 19, 2006 - January 4, 2007	May 28, 2012
Carter's Inc.	$20,000,000	March 16, 2005 - November 10, 2009	June 1, 2012
American International Group, Inc. (2004)	$115,000,000	October 28, 1999 - April 1, 2005	June 4, 2012
Merit Securities Corp. Collateralized Bonds (Dynex Capital, Inc.)	$7,500,000	February 7, 2000 - May 13, 2004	June 4, 2012
Inyx, Inc.	$600,000	April 1, 2005 - July 2, 2007	June 8, 2012
Pilgrim's Pride Corporation	$1,500,000	May 5, 2008 - October 28, 2008	June 9, 2012
Morgan Keegan Funds (SEC)	$200,300,000	January 1, 2007 - March 31, 2008	June 16, 2012
SearchMedia Holdings Limited (f/k/a Ideation Acquisition Corp.) (S.D. Fla.)	$2,750,000	April 1, 2009 - August 20, 2010	June 22, 2012
ArthroCare Corp.	$74,000,000	Dec. 11, 2007 - February 18, 2009	June 25, 2012
Washington Mutual, Inc. (2004)	$41,500,000	April 15, 2003 - June 28, 2004	July 2, 2012
PacketPort.com, Inc. (n/k/a Wyndstorm Corp.) (SEC)	$1,075,000	December 13, 1999 - April 11, 2000	August 1, 2012

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The Law Firm Institutional Investors Trust
for Securities Monitoring and Litigation

Pomerantz is acknowledged as one of the premier firms in the areas of corporate, securities, antitrust, mergers and acquisitions, and insurance litigation. Founded by the late Abraham L. Pomerantz, known as the 'dean of the class action bar,' the firm pioneered the field of securities class actions. Today, more than 75 years later, Pomerantz continues in the tradition that Abe Pomerantz established, fighting for the rights of victims of securities fraud, breaches of fiduciary duty, and corporate misconduct. Prior results, however, do not guarantee a similar outcome in future cases.

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